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HON. WHITMAN L. HOLT

8 UNITED STATES BANKRUPTCY COURT  
9 EASTERN DISTRICT OF WASHINGTON

10 In re:

11 EASTERDAY RANCHES, INC., *et al.*

12 Debtors

Chapter 11

Lead Case No.: 21-00141 WLH11  
Jointly Administered

**OBJECTION TO MOTION TO  
APPROVE SETTLEMENT WITH  
COMMODITY FUTURES TRADING  
COMMISSION UNDER FED. R.  
BANKR. P. 9019**

16 Tyson's objection to the Motion<sup>1</sup> is limited to the circumstances for subordination of the  
17 Restitution Obligation. Subordination of the Restitution Obligation under the Consent Order is  
18 predicated on Tyson maintaining a separate and distinct general unsecured claim against  
19 Ranches.<sup>2</sup> Indeed, Tyson has no objection to subordination of the Restitution Obligation so long  
20 as Tyson maintains a direct general unsecured claim against Ranches.<sup>3</sup> However, the Restitution  
21 Obligation should not be subordinated if and to the extent Tyson's direct claim is subsequently  
22 subordinated under Bankruptcy Code § 510(c) or disallowed under § 502(d).  
23

25 <sup>1</sup> *Motion to Approve Settlement with Commodity Futures Trading Commission Under Fed. R. Bankr.*  
26 *P. 9019* ("**Motion**") [Doc 1203]. Unless otherwise defined in this objection, capitalized terms  
retain the definition given to them in the Motion.

27 <sup>2</sup> Motion at p. 7, n. 4.

28 <sup>3</sup> Tyson filed Proof of Claim No. 61 in these cases on May 26, 2021 which asserts a general  
unsecured claim in the amount of more than \$232 million.

1 The Commodity Exchange Act (“CEA”) empowers the CFTC to bring an action against  
2 any registered entity or person for violations of the CEA.<sup>4</sup> Among the compliance remedies, the  
3 CEA authorizes the CFTC to seek and the court to order “*restitution to persons* who have sustained  
4 losses proximately caused by such violation (in the amount of such losses).”<sup>5</sup> As one court  
5 described it: “Restitution under the CEA is . . . *for the use and benefit of the persons who have sustained*  
6 *losses* proximately caused by . . . violations of the CEA.”<sup>6</sup>

8 Consistent with the CEA’s express language in § 13a-1(d)(3)(A), courts consistently order  
9 that the restitution payments awarded under the CEA be routed by the CFTC to the identified  
10 victims who sustained the losses. *See, e.g., CFTC v. Arrington*, 998 F. Supp. 2d 847, 877-78 (D.  
11 Neb. 2014) (ordering National Futures Association to oversee receipt of restitution funds for  
12 CFTC and then distribute the funds to victims); *CFTC v. Millennium Trading Group, Inc.*, 2007  
13 U.S. Dist. LEXIS 65784 at \*34-35, Case No. 07-CV-11626 (E.D. Mich. Sep. 6, 2007) (same).

15 Here, the Restitution Obligation is based on losses sustained by Tyson due to Ranches’  
16 violations of the CEA.<sup>7</sup> Absent Tyson’s separate and direct claim against Ranches for the losses,  
17 the CFTC would have the power to seek payment of the Restitution Obligation from Ranches  
18 and the obligation to route restitution recoveries to Tyson. Tyson appreciates, however, that so  
19 long as Tyson maintains a direct general unsecured claim against Ranches, subordination of the  
20 Restitution Obligation is appropriate to avoid duplicative payment, dilution of pro rata payment  
21 calculations, and class voting tabulation issues.

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24 <sup>4</sup> 7 U.S.C. § 13a-1.

25 <sup>5</sup> *Id.* at § 13a-1(d)(3)(A) (emphasis added).

26 <sup>6</sup> *CFTC v. Escobio*, 946 F.3d 1242, 1252 n.10 (11th Cir. 2020).

27 <sup>7</sup> The exact amount of the Restitution Obligation (\$233,008,042) comes directly from Cody  
Easterday’s criminal *Plea Agreement* where Cody Easterday agreed the restitution amount owed  
28 to Tyson was \$233,008,042. Cody Easterday’s *Plea Agreement* is attached as Exhibit A to Tyson’s  
Proof of Claim

1 But there should be no subordination of the Restitution Obligation to the extent Tyson's  
2 direct claim were to be subordinated under Bankruptcy Code § 510(c) or disallowed under  
3 § 502(d). This is because equitable subordination and disallowance—to the extent they apply at  
4 all, which they do not—would be personal disabilities of Tyson that do not inhere in the  
5 underlying claim.<sup>8</sup> Said another way: CFTC's claim for restitution—which is a separate and  
6 distinct claim of the CFTC—is not subject to equitable subordination or disallowance based on  
7 the conduct of Tyson.

9 Tyson does not believe its direct claim is subject to subordination or disallowance, and  
10 indeed believes any such contention would be frivolous. Tyson has been advised, however, that  
11 the Ranches Committee continues to investigate such matters. Accordingly, the proposed  
12 subordination of the Restitution Obligation presents a staging problem. Subordination of the  
13 Restitution Obligation is appropriate to the extent it would lead to double recovery. But  
14 unconditional subordination of the Restitution Obligation is inappropriate to the extent Tyson  
15 is still exposed to subordination or disallowance. The estate should not be allowed to prejudice  
16 Tyson by sequencing the matters in such a way.

18 For the reasons above, Tyson requests the court modify the subordination of the  
19 Subordinated Restitution Claim<sup>9</sup> to provide that the subordination is null and void to the extent  
20 Tyson's direct claim against Ranches is subordinated or disallowed, and provide any further  
21 relief the court deems just and proper.

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24 <sup>8</sup> See, e.g., *In re Enron Corp.*, 379 B.R. 425 (S.D.N.Y. 2007) (finding equitable subordination  
25 and disallowance are both personal disabilities that do not inhere in the claim; unless there was  
26 a pure assignment of the claim, the claim in the hands of the transferee is not subject to equitable  
subordination or disallowance based solely on the conduct of the transferor).

27 <sup>9</sup> Tyson does not object to the unconditional subordination of the separate Subordinated  
28 CMP Claim which, as a claim for penalties, is properly subordinated under Bankruptcy Code  
§ 726(a)(4).

1 Dated: November 9, 2021.

2 Respectfully submitted,

3 /s/ Alan D. Smith

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